



November 20, 2001

Ms. Lillian Guillen Graham
Assistant City Attorney
City of Mesquite
P.O. Box 850137
Mesquite, Texas 75185-0137

OR2001-5386

Dear Ms. Graham:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 155218.

The City of Mesquite Police Department (the "department") received a request for five incident reports. You indicate the department will release some of the responsive information. However, you claim that some of the requested information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. You contend that portions of the submitted information are confidential under sections 771.061 and 772.318 of the Health and Safety Code. Section 771.061(a) of the Health and Safety Code makes confidential "[i]nformation that a service provider of telecommunications service is required to furnish to a governmental entity in providing computerized 9-1-1 service" as well as "[i]nformation that is contained in an address database maintained by a governmental entity or a third party used in providing computerized 9-1-1 service." Thus, to the extent the department provides computerized 9-1-1 service and the telephone numbers you have highlighted were required to be furnished to the department by a telecommunications service provider, the telephone numbers are confidential under section 771.061 of the Health and Safety Code and must be withheld under section 552.101 of the Government Code. *See* Open Records Decision No. 661 at 2 (1999).

Even if the telephone numbers are not confidential under section 771.061 of the Health and Safety Code, they may be confidential under chapter 772 of the Health and Safety Code. In Open Records Decision No. 649 (1996), which interpreted section 772.318 of the Health and Safety Code, we examined several confidentiality provisions in chapter 772 of the Health and Safety Code. To the extent that the portions of the information containing the highlighted telephone numbers involve an emergency 911 district established in accordance with chapter 772 of the Health and Safety Code, which authorizes the development of local emergency communications districts, the information may be confidential under chapter 772. Sections 772.118, 772.218, and 772.318 of the Health and Safety Code make confidential the originating telephone numbers and addresses of 911 callers furnished by a service supplier. *See* Open Records Decision No. 649 (1996). Section 772.118 applies to emergency communication districts for counties with a population over two million. Section 772.218 applies to emergency communication districts for counties with a population over 860,000. Section 772.318 applies to emergency communication districts for counties with a population over 20,000. Subchapter E, which applies to counties with populations over 1.5 million, does not contain a confidentiality provision regarding 911 telephone numbers and addresses. *See* Health & Safety Code §§ 772.401, *et seq.* Thus, if the emergency communication district here is subject to section 772.118, 772.218, or 772.318, the originating telephone numbers are protected from public disclosure under section 552.101 as information deemed confidential by statute.

We note that the submitted information contains information that is confidential under section 261.201 of the Family Code. Section 261.201(a) of the Family Code provides as follows:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Because the information at issue relates to an allegation of child abuse and neglect, the information is within the scope of section 261.201 of the Family Code. You have not indicated that the department has adopted a rule that governs the release of this type of information. Therefore, we assume that no such regulation exists. Given that assumption,

the requested documents are confidential pursuant to section 261.201 of the Family Code. See Open Records Decision No. 440 at 2 (1986) (predecessor statute). Accordingly, the department must withhold the information we have marked under section 261.201 of the Family Code.¹

Section 552.101 also encompasses the doctrines of common law and constitutional privacy. Common law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683. We agree that some of the submitted information is confidential under common law privacy. However, we do not believe that social security numbers are the type of intimate and embarrassing information protected under common law privacy. Open Records Decision No. 169 (1977). We have marked the information that must be withheld under section 552.101 of the Government Code in conjunction with common law privacy.

A social security number or "related record" may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). See Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. See *id.* We have no basis for concluding that any of the social security numbers in the file are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Public Information Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by the department pursuant to any provision of law, enacted on or after October 1, 1990. Even if the social security numbers were obtained pursuant to a provision of law enacted on or after October 1, 1990, however, the requestor here has a special right of access to his client's social security number. Under section 552.023 of the Government Code, a person or a person's authorized representative has a special right of access to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person's privacy interests.

¹We note, however, that if the Texas Department of Regulatory Services has created a file on this alleged abuse, the child's parent(s) may have the statutory right to review that file. See Fam. Code § 261.201(g).

Section 405(c)(2)(C)(viii)(I) of the Social Security Act is designed to protect a person's privacy interest. Therefore, department may not withhold the requestor's client's social security number in this instance.

You also contend that some of the submitted information is excepted from disclosure under section 552.130 of the Government Code. Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

Thus, the department is generally required to withhold Texas driver's license information and vehicle title and registration information under section 552.130. However, section 552.130 of the Government Code, like section 405(c)(2)(C)(viii)(I) of the Social Security Act, is designed to protect a person's privacy interest. Therefore, the requestor has a special right of access to his client's driver's license information and vehicle title and registration information under section 552.023 of the Government Code. We have marked one driver's license number that does not belong to the requestor's client and therefore must be withheld under section 552.130.

In summary, you must withhold the highlighted telephone numbers under section 771.061 of the Health and Safety Code if a telecommunications service provider was required to provide this information to the department for purposes of providing computerized 9-1-1 service. Similarly, you must withhold the highlighted telephone numbers to the extent the emergency communication district at issue is subject to section 772.118, 772.218, or 772.318 of the Health and Safety Code. You must withhold a portion of the submitted information, which we have marked, under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. You must also withhold some of the submitted information, which we have marked, under section 552.101 of the Government Code in conjunction with common law privacy. To the extent the department obtained or maintained the submitted social security numbers pursuant to a provision of law enacted on or after October 1, 1990, you must withhold the social security numbers, other than the social security number of the requestor's client, under section 552.101 of the Government Code and section 405(c)(2)(C)(viii)(I) of the Social Security Act. Finally, you must withhold the marked driver's license number under section 552.130. You must release the remainder of the submitted information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Nathan E. Bowden
Assistant Attorney General
Open Records Division

NEB/sdk

Ref: ID# 155218

Enc: Submitted documents

c: Mr. Michael Collins
Collins, Norman & Basinger
13601 Preston Road, Suite 600
Dallas, Texas 75240
(w/o enclosures)